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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/733,824	12/08/2000	Leonid Gurevich	ISURFTV145	2444

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EXAMINER
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HOYE, MICHAEL W

ART UNIT	PAPER NUMBER
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2623

DATE MAILED: 10/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/733,824	GUREVICH ET AL.	
	Examiner	Art Unit	
	Michael W. Hoye	2623	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 May 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-17 and 19-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-17 and 19-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicants' submission filed on May 3, 2006 has been entered.

### ***Response to Arguments***

2. Applicants' arguments filed on May 3, 2006 have been fully considered but they are not persuasive.

Regarding independent claims 1, 8 and 17, the Applicants argue on page 6 of the Remarks that, "Claims 1, 8 and 17, as amended, recite "receiving an order for pre-recorded audio or pre-recorded video data offered in a broadcast based on a user selection made while viewing the broadcast through a video viewing system," or similar language. Ellis does not disclose or describe at least this quoted claim feature."

More specifically, the Applicants argue on pages 6-7 that, "Ellis discloses a system in which a program is only recorded in response to a request received through a program guide... [Ellis, paragraph 0011] Ellis only records after a request is received... [Ellis paragraph 0075] Ellis does not disclose a request for pre-recorded data through, and at the time of, a broadcast... [Ellis, paragraph 0076 and 0084]"

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In response, the Examiner respectfully disagrees with the Applicants because the Ellis et al reference clearly discloses the amended claim language including, “receiving an order for pre-recorded audio or pre-recorded video data offered in a broadcast based on a user selection made while viewing the broadcast through a video viewing system,” or similar language, as met by paragraph [0133] of Ellis, where Ellis specifically teaches that, “In addition to providing the user with the opportunity to access television programming and program guide data in these and other ways, the program guide may provide the user with an opportunity to record programs on demand at remote media server 24 or local media server 29, to view listings or directories of the programs that have been recorded or selected for recording, and to play videos and associated program guide data on demand from remote media server 24 or local media server 29.” Therefore, Ellis clearly discloses or teaches that pre-recorded audio or pre-recorded video data offered in a broadcast may be ordered based on a user selection made while viewing the broadcast.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-3, 5 and 8-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Ellis et al (US 2003/0149988 A1), cited by the Examiner.

As to claim 1, note the Ellis et al reference which discloses the claimed method of, “receiving an order for pre-recorded audio or pre-recorded video data offered in a broadcast based on a user selection made while viewing the broadcast through a video viewing system,” as met by the user TV equipment 22, including a set-top box 28, a television 36, and a remote control 40 (see Figs. 2a-2e and/or television 36 in Fig. 7, and ¶’s [0058]-[0060], [0064]-[0065], [0097]-[0098] and [0133]), which may receive an order for audio or video data offered in a broadcast/distribution of programming and program data, where a user highlights a program, such as “I Love Lucy” (Fig. 11a), and selects the “record” button on the remote control 40 (see Figs. 7, 8 and 14a-b, and pgs. 11-12, ¶ [0133]-[0134]), or by the user highlighting a pay-per-view program listing and pressing “order” or another suitable key on the remote control 40 (see Fig. 15a and pg. 12, ¶ [0138]), or specifically at the end of ¶ [0133] and the top of page 12, where users may indicate a desire to record a program or group of programs on demand by, for example, pressing a “RECORD” key on remote control 40 while watching a program (see pgs. 11-12, ¶’s [0133] - [0134] and Fig. 14a). Furthermore, paragraph [0133] of Ellis, specifically teaches that, “In addition to providing the user with the opportunity to access television programming and program guide data in these and other ways, the program guide may provide the user with an opportunity to record programs on demand at remote media server 24 or local media server 29, to view listings or directories of the programs that have been recorded or selected for recording, and to play videos and associated program guide data on demand from remote media server 24 or local media server 29.” The claimed, “wherein the step of receiving the order comprises recording a time and channel being viewed by the user,” is met by the user indicating a desire to order or record as program, where a record request is transmitted to the

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appropriate media server, and the record request or order may include information related to the program and the user including the time and channel being viewed by the user (see page 6, ¶ [0087], pages 11-12, ¶'s [0133] - [0134] and page 12, ¶ [0142]). The claimed “transmitting the order from the video viewing to a data storage device” is met by the set-top box 28 transmitting the request or order to the remote media server 24, which comprises a server 24 (and 25) and data storage 15 (see Figs. 7 and 2a-2e, and pg. 7, ¶ [0091] for example). The claimed, “matching the recorded time and channel to identify desired pre-recorded audio or pre-recorded video data,” is met by the user indicating a desire to order or record as program, where the set-top box 28 transmits the information or a record request to the head-end and server or appropriate media server, and the information or record request (order) may include information related to the program and the user, including the time and channel being viewed by the user (see pg. 6, ¶ [0087], pg. 7, ¶ [0091], pgs. 11-12, ¶'s [0133] - [0134] and pg. 12, ¶ [0142]), in order to retrieve and “transmit the requested pre-recorded audio or pre-recorded video data to the user”, which is met by the programs or videos may be distributed by distribution equipment 21 to user television equipment 22 in various formats, such as MPEG-2 files, an MPEG-2 data stream, or other formats (see pg. 7, ¶ [0097] and pg. 11, ¶ [0133] as described above).

As to claim 3, the claimed “wherein a user identification number is recorded along with the time and channel viewed” is met as previously described above in claim 1 where the set-top box 28 transmits the information to the head-end and server, where the information includes time(s), channel viewed, a user number or identification, and other information (see pg. 6, ¶ [0087]).

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As to claim 5, the Ellis et al reference discloses that the claimed “order for data” may be added to a communication between the video viewing system (22) and a server (24) regulating the broadcast received via a communication medium (20) (see pgs. 8-9, ¶ [0105]-[0107] and Figures 2a-2e, 7 and 9).

As to claim 8, note the Ellis et al reference which discloses a video viewing system (user TV equipment 22, including a set-top box 28, a television 36, and a remote control 40, see Figs. 2a-2e and/or television 36 in Fig. 7, and ¶’s [0058]-[0060], [0064]-[0065], [0097]-[0098] and [0133]), for displaying video programs (television 36, Fig. 7) and receiving orders for pre-recorded audio or pre-recorded video data offered in a broadcast/distribution of programming and program data (remote control 40, see Figs. 7 and 8), where a user highlights a program, such as “I Love Lucy” (Fig. 11a), and selects the “record” button on the remote control 40 (see Figs. 7, 8 and 14a-b, and pgs. 11-12, ¶ [0133]-[0134]), or by the user highlighting a pay-per-view program listing and pressing “order” or another suitable key on the remote control 40 (see Fig. 15a and pg. 12, ¶ [0138]), or specifically at the end of ¶ [0133] and the top of page 12, where users may indicate a desire to record a program or group of programs on demand by, for example, pressing a “RECORD” key on remote control 40 while watching a program (see pgs. 11-12, ¶’s [0133] - [0134] and Fig. 14a). Furthermore, paragraph [0133] of Ellis, specifically teaches that, “In addition to providing the user with the opportunity to access television programming and program guide data in these and other ways, the program guide may provide the user with an opportunity to record programs on demand at remote media server 24 or local media server 29, to view listings or directories of the programs that have been recorded or selected for recording, and to play videos and associated program guide data on demand from

remote media server 24 or local media server 29.” The claimed, “wherein the system for receiving orders includes a means for recording a time and channel being viewed by the user when ordering,” is met by the user indicating a desire to order or record as program, where a record request is transmitted to the appropriate media server, and the record request or order may include information related to the program and the user including the time and channel being viewed by the user (see page 6, ¶ [0087], pages 11-12, ¶’s [0133] - [0134] and page 12, ¶ [0142]). The claimed, “server for receiving and processing orders for pre-recorded audio or pre-recorded video data,” is met by server 24 (Figs. 2a-2e), and the claimed, “means for matching the recorded time and channel to identify the desired pre-recorded audio or pre-recorded video data,” is met by the user indicating a desire to order or record as program, where the set-top box 28 transmits the information or a record request to the head-end and server or appropriate media server, and the information or record request (order) may include information related to the program and the user, including the time and channel being viewed by the user (see pg. 6, ¶ [0087], pg. 7, ¶ [0091], pgs. 11-12, ¶’s [0133] - [0134] and pg. 12, ¶ [0142]), in order to retrieve and transmit the requested audio or video data to the user. The claimed “communications medium between the video viewing system and the server” and “link between the server and the viewer...” is met by the video and data input 26 in Fig. 7 (pg. 8, ¶ [0098]) or communications path 20 (see Figs. 2a – 2d), and the claimed “delivery of the pre-recorded audio or pre-recorded video data in a portable electronic form” is met by the programs or videos may be distributed by distribution equipment 21 to user television equipment 22 in various formats, such as MPEG-2 files, an MPEG-2 data stream, or other formats (see pg. 7, ¶ [0097] and pg. 11, ¶ [0133]).



As to claim 9, the Ellis et al reference discloses the claimed “set top box” (see 28, Fig. 7) and “a video viewing media” (see television 36).

As to claim 10, the claimed “video viewing system includes a cursor control which allows a user to signal selection by placing the cursor in a specific area, or “hot” area, of the viewing medium’s screen” is met by a user positioning highlight region, such as 151 (see Figs. 10 and 11a-c), over a desired program guide option related to program listings by manipulating the user input device 46 (see pg. 10, ¶ [0121], [0123] and [0116]).

As to claim 11, the claimed “video viewing system includes a remote control with an “activate” button, which signals selection of an audio or video data program” is met by the user pressing a “RECORD” key on remote control 40 after highlighting a programs listing (see Fig. 8, pg. 11, end of ¶ [0133] and [0134]) or by the user highlighting a pay-per-view program listing and pressing the “order” or other suitable key on remote control 40 (see pg. 12, ¶ [0138]).

As to claim 12, the Ellis et al reference discloses that the claimed “order for pre-recorded data” may be added to a communication between the video viewing system (22) and a server (24) regulating the broadcast received via a communication medium (20) (see pgs. 8-9, ¶ [0105]-[0107], pg. 11, ¶ [0133] and Figures 2a-2e, 7 and 9).

As to claim 13, Ellis et al discloses the claimed “more than one server and mass data storage unit service the video viewing system” as met by remote media server 24, storage 15, Internet service system 61, and program guide server, which are all a part of the distribution facility 16 (Fig. 2d).

As to claim 14, the claimed “requested pre-recorded data is transmitted via a broadcast system to the user’s video viewing system” is met by the requested data being transmitted via a

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communications paths 20 (see Figs. 2a-2d and 9), which may include, for example, a satellite link, a telephone network link, a cable or fiber optic link, a microwave link, an Internet link, a data-over-cable service interface specification (DOCSIS) link, a combination of links, or any other suitable communications link (see pg. 4, ¶ [0064]-[0065]) to the user television equipment 22/set top box 28 (pg. 5, ¶ [0075], also see pg. 11, ¶ [0133]).

As to claim 15, the claimed “video viewing system includes an audio or video file player that can download the pre-recorded audio or pre-recorded video data from a port” is met by digital storage device 31, which can be an external device connected to set-top box 28 via an output port and appropriate interface (see Fig. 7 and pg. 8, ¶ [0102]). The digital storage device 31 may be a DVD player capable of handling recordable DVD disks, or may be various other players and storage devices (pg. 8, ¶ [0101]). The video viewing system (user television equipment 32) also may include a secondary storage device 32 (see pg. 8, ¶ [0098], [0100] and [0104]).

As to claim 16, the claimed “video viewing system includes a removable memory media that stores the pre-recorded audio or pre-recorded video data” is met by digital storage device 31 and/or secondary storage device 32, as previously described above in claim 15, which may include DVD disks or various other removable memory media.

As to claim 17, note the Ellis et al reference which discloses the claimed “machine-readable storage medium...” as met by memory 63, which may be any memory or other storage device, such as a random access memory (RAM), read only memory (ROM), flash memory, a hard disk drive, a combination of such devices, etc., that has stored program guide application instructions and other data for use by control circuitry 42 for execution by the user television

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equipment 22, such as set-top box 28 (see Figures 7 and 9, and pg. 9, ¶ [0112]-[0114]), which performs the claimed method of “receiving an order for pre-recorded audio or pre-recorded video data offered in a video broadcast based on a user selection made while viewing the broadcast through a video viewing system,” as met by the user TV equipment 22, including a set-top box 28, a television 36, and a remote control 40 (see Figs. 2a-2e and/or television 36 in Fig. 7, and ¶’s [0058]-[0060], [0064]-[0065], [0097]-[0098] and [0133]), which may receive an order for audio or video data offered in a broadcast/distribution of programming and program data, where a user highlights a program, such as “I Love Lucy” (Fig. 11a), and selects the “record” button on the remote control 40 (see Figs. 7, 8 and 14a-b, and pgs. 11-12, ¶ [0133]-[0134]), or by the user highlighting a pay-per-view program listing and pressing “order” or another suitable key on the remote control 40 (see Fig. 15a and pg. 12, ¶ [0138]), or specifically at the end of ¶ [0133] and the top of page 12, where users may indicate a desire to record a program or group of programs on demand by, for example, pressing a “RECORD” key on remote control 40 while watching a program (see pgs. 11-12, ¶’s [0133] - [0134] and Fig. 14a). Furthermore, paragraph [0133] of Ellis, specifically teaches that, “In addition to providing the user with the opportunity to access television programming and program guide data in these and other ways, the program guide may provide the user with an opportunity to record programs on demand at remote media server 24 or local media server 29, to view listings or directories of the programs that have been recorded or selected for recording, and to play videos and associated program guide data on demand from remote media server 24 or local media server 29.” The claimed, “wherein the step of receiving the order comprises recording a time and channel being viewed by the user,” is met by the user indicating a desire to order or record as program, where a record request is transmitted to the

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appropriate media server, and the record request or order may include information related to the program and the user including the time and channel being viewed by the user (see page 6, ¶ [0087], pages 11-12, ¶'s [0133] - [0134] and page 12, ¶ [0142]). The claimed "transmitting the order from the video viewing to a server and data storage device" is met by the set-top box 28 transmitting the request or order to the remote media server 24, which comprises a server 24 (and 25) and data storage 15 (see Figs. 7 and 2a-2e, and pg. 7, ¶ [0091] for example). The claimed, "matching the recorded time and channel to identify the desired pre-recorded audio or pre-recorded video data," is met by the user indicating a desire to order or record as program, where the set-top box 28 transmits the information or a record request to the head-end and server or appropriate media server, and the information or record request (order) may include information related to the program and the user, including the time and channel being viewed by the user (see pg. 6, ¶ [0087], pg. 7, ¶ [0091], pgs. 11-12, ¶'s [0133] - [0134] and pg. 12, ¶ [0142]), in order to retrieve and transmit the requested pre-recorded audio or pre-recorded video data to the user. The claimed "transmitting the requested pre-recorded audio [and/] or pre-recorded video data to the user in a portable electronic form" is met by the programs or videos may be distributed by distribution equipment 21 to user television equipment 22 in various formats, such as MPEG-2 files, an MPEG-2 data stream, or other formats (see pg. 7, ¶ [0097]).

As to claims 19-20, the claims are rejected based on the same arguments made in the rejection of claims 3 and 5 respectively.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 4, 6-7 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis et al.

As to claim 4, the Ellis et al reference discloses a method for automatically debiting the user's account (see pg. 12, ¶ [0136]). Ellis et al does not does not explicitly disclose that "an encrypted credit card or debit card number is recorded along with the time and channel viewed". However, the Examiner takes Official Notice that it is notoriously well known in the art of audio/video distribution and purchasing systems to have the ability to send an encrypted credit or debit card account number along with a time and channel viewed for an order that is to be purchased through the system for the advantage of allowing a user to purchase audio or video data through by using an account or their own choice, and whereby the user's personal account information is protected for their own security through encryption methods for the advantage of preventing hackers or other individuals from stealing the user's personal account information. Therefore, it is submitted that it would have been clearly obvious to one of ordinary skill in the art at the time of the invention to have an encrypted credit card or debit card number recorded along with the time and channel viewed for the advantages given above.

As to claim 6, the Ellis et al reference discloses the method of claim 1 as described above. Ellis et al does not explicitly disclose that a method of transmission is determined by user preprogrammed instructions. However, the Examiner takes Official Notice that it is notoriously well known in the art of interactive video distribution systems to have the viewer enter preprogrammed instructions into their system or set-top box, for the advantages of allowing

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multiple users to access the system according to their own personal settings, and to provide parental control of the system, in addition to, providing the user with quick response time, since the user would not have to set up the method of transmission each time an order is placed by having the method already setup through activating their own identification number. Therefore, it is submitted that it would have been clearly obvious to one of ordinary skill in the art at the time of the invention to have the method of transmission determined by user preprogrammed instructions for the advantages given above.

As to claim 7, the Ellis et al reference discloses the method of claim 3 as described above. Ellis et al does not explicitly disclose that a method of transmission is determined by a user identification number. However, the Examiner takes Official Notice that it is notoriously well known in the art of interactive video distribution systems to have the viewer enter a personal identification number or PIN in order to have access to special settings or privileges, including a method of transmission for ordering a product or service such as audio or video data for the advantages of limiting access only to users who have paid for the service and further preventing hackers from using the system, or to allow for multiple users to access the system according to their own personal settings, and to provide parental control of the system, in addition to, providing the user with quick response time, since the user would not have to set up the method of transmission each time an order is placed by having the method already setup through activating their own identification number. Therefore, it is submitted that it would have been clearly obvious to one of ordinary skill in the art at the time of the invention to have the method of transmission determined by a user identification number for the advantages given above.

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As to claim 21, the claim is rejected based on the same arguments made in the rejection of claim 6.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael W. Hoye whose telephone number is **571-272-7346**.

The examiner can normally be reached on Monday to Friday from 8:30 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller, can be reached at **571-272-7353**.

**Any response to this action should be mailed to:**

Please address mail to be delivered by the United States Postal Service (USPS) as follows:

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**Or faxed to: 571-273-8300**

**Hand-delivered responses should be brought to the Customer Service Window at the address listed above.**

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to customer service whose telephone number is **571-272-2600**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866-217-9197** (toll-free).

Michael W. Hoyer  
October 27, 2006



**JOHN MILLER**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 2600**